

## Husband and Wife: Liability of Wife's Estate for Expense of Last Illness; Funeral

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remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same," and the purpose of this provision is that it "furnishes reliable evidence to the company with respect to the actual loss, and as to all the facts and circumstances involved in and surrounding the loss," and it is held that the examination and investigation are contemplated by the express provision of the *statutory policy*, and are a part of the legislative agreement. This wording clearly sustains the standard policy provision. The court says that if under the facts detailed, the defendant was estopped, then the standard form of policy "would serve the purpose of a snare to entrap the insurance company into a waiver," and says, "such is not the case." *Oshkosh Match Works v. Manchester Fire Ins. Co.*, 92 Wis. 510, is cited as sustaining the right of the Insurance Company to an examination under oath of the insured after loss, and without waiver of its rights in so doing.<sup>9</sup>

Prior to the adoption of the Wisconsin standard fire policy, the conducting of an examination under oath was held as a waiver. *Oshkosh Gas Light Co. v. Germania Ins. Co.*, 71 Wis. 54. In the enactment of the standard fire policy the rule changed.<sup>9</sup>

EDWARD S. FOLTZ, JR.

#### Husband and Wife; Liability of Wife's Estate for Expense of Last Sickness; Funeral

*Lichtenberger v. Central Wisconsin Trust Co.*, 222 N.W. 218. While the deceased, Nellie Cox Phalen, was suffering from her last sickness, her sister, one Jane Lichtenberger, was requested by the husband of the deceased to perform the services of a nurse, under the promise that Mr. and Mrs. Phalen would pay her well therefor. The services were performed and subsequent to the death of the deceased, claimant filed her bill, which was allowed by the lower court. From this decision an appeal is taken. Counsel for the trust company contends that this debt is not properly chargeable to the estate of the deceased because it was not her debt but the debt of the husband. On the other hand, claimant's counsel contends that the debt became properly chargeable to the wife's estate, citing *Schneider v. Estate of Breier*, 129 Wis. 441 as their authority for such contention.

Section 313.16 Wis. Stat. reads: "If, after the amount of the claims against any estate shall have been *ascertained* by the court, . . ." Interpreting this statute, the court says that the claims against any estate are those *allowed* by the court. This interpretation does not give to

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<sup>9</sup> *Aetna Ins. Co. v. Itule (Ariz.)*, 218 Pac. 990; *Connecticut Fire Ins. Co. v. George*, 153 Pac. 116; *Shapiro v. Security Ins. Co.*, 152 N.E. 370, are also cited in support of the same rule.

the courts the right to allow any claims, but the class which may be allowed are definitely limited by former decisions. Under the breadth of this interpretation of the statute, the court may, within its discretion, allow certain claims not contracted by the deceased but arising because of the death of the deceased. The question is, was the lower court justified in allowing this claim for expenses connected with the last sickness of the deceased to be charged to the wife's estate?

In *Schneider v. Estate of Breier*, 129 Wis. 441, the court allowed the claim for burial expenses to be charged to the wife's estate. It is pointed out that Wisconsin follows a decided minority in allowing such a claim to go through. In a debt for funeral expenses, the obligation arises after the death of the deceased and in most instances it is raised by implication, based on the necessity of disposing of the body. The burial must be sanitary and within a reasonable time, in order to preserve health and prevent disease. The time within which the dead body must be interred being limited, it is necessary to impose upon the assets of the deceased, when such assets exist, the expense of burial.

What of the expenses incurred during the last sickness? The court points out that there is a distinction between these and the debt arising out of funeral expenses. In the first place the debt is contracted during the life time of the party and again the doctrine of public necessity cannot be invoked. For the disposition of the case in hand, however, it was not necessary to decide whether or not they are properly allowable. Here a husband contracted for the services and it is his debt the same as though the services were rendered on him personally. Such a debt cannot be charged to the wife's estate. Summing up what is found in the case, we learn: (1) that claims that may be filed against an estate are those that are *allowed* by the court; (2) that these claims may be divided into two general classes: (a) obligations contracted by the deceased during her lifetime, (b) obligations that accrue by virtue of what happens after death; (3) that under the latter class, Wisconsin follows the minority in allowing claims for funeral expenses against the estate of the wife; (4) that a claim for expenses incurred during the last sickness of the wife, is not allowable unless it has been personally contracted.

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